

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Hans HAMMER, et al.

Serial No.: 10/552,203

Group No.: 3744

Filed: October 6, 2005

Examiner: W. Tapolcal

For: MOTOR VEHICLE COMPRISING AN AIR CONDITIONING SYSTEM

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

CERTIFICATION UNDER 37 C.F.R. 1.8(a) and 1.10*

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37 C.F.R. 1.8(a)

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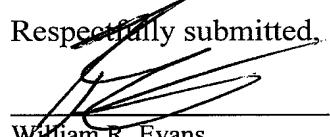
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- Only the date of filing (§ 1.6) will be the date used in a patent term adjustment calculation. Consider "Express Mail Post Office to Addressee" (§ 1.10) or facsimile transmission (§ 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

The review is requested for the reason(s) stated on the Attached Sheet(s).

NOTE: No more than five (5) pages may be provided.

Respectfully submitted,



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PATENT

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Serial No.: 10/552,203 Group No.: 3744

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Attorney Docket No.: U 015890-0

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ATTACHED SHEETS OF PRE-APPEAL BRIEF REQUEST FOR REVIEW

Claim 1 requires ducting in a motor vehicle air conditioning system "... entirely of metallic substance, inclusive of couplings"

The Allread, et al. patent of the final rejection for obviousness under 35 USC 103 neither discloses nor suggests this.

PRIOR ART MUST BE CONSIDERED IN ITS ENTIRETY, INCLUDING DISCLOSURES THAT TEACH AWAY FROM THE CLAIMS MPEP 2141.03 VI
(emphasis original)

The Allread, et al. patent discloses only coupling bearings 36 and 37 "... preferably formed of nylon ..." (col. 6, line 38) and but possibly of metals (col. 6, line 45) along with "... O-ring or other seals 38 ... preferably formed of resilient, chemically stable polymeric material ..." (col. 6, lines 50-52), without even a suggestion of metallic substance, as claimed. The bearings 36 and 37 teach away from the claims and the seals 38 fail to disclose it.

... [R]ejections on obviousness cannot be sustained by mere conclusory statements; instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in KSR International Co. v. Teleflex Inc.*, Fed. Reg. October 10, 2007, 57526, 57528-9.

Omitting the seals would make the coupling of Allread, et al. untight. Replacing the elastic sealing material of the coupling of Allread et al. by an inelastic material would create a sliding and, therefore, untight contact between die inner and outer part of such a ball joint as Allread, et al. discloses. Therefore, Allread, et al. cannot rationally underpin the rejection.

In its Summary (col. 2, lines 32-34), the Allread, et al. invention:

... is comprised solely of rigid lengths of tubing fastened together by flexible connectors ... (emphasis added).

The claimed couplings are entirely of metallic substance, which flexibility does not suggest.

The embodiments shown in the Allread, et al. patent are similar to a ball joint which, by the ball shape, allows a high degree of angular movement, but has the parts that turn relative to each other sealed with an elastic sealing material. Such prior art is typical, having drawbacks described the specification that should be avoided by the different, claimed invention of metallic substance.

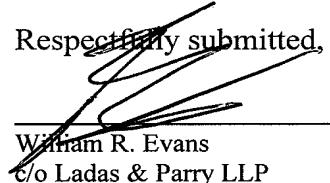
The applicant does not interpret Allread, et al. too narrowly; instead, the rejection is too broad. The statement, "... one of ordinary skill in the art would certainly be able to use seals or not, with varying degrees of success" is unsupported speculation that admits, by varying degrees of success, that the patent does not teach toward the claimed invention.

It is not rational to underpin a rejection of the claimed metallic substance couplings with a reference that does not disclose them when, in the words of the Advisory Action itself (at 11(2)):

... to make the couplings entirely of metal would reduce the effectiveness of the couplings

Reconsideration and allowance are, therefore, requested.

Respectfully submitted,



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